IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 841 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIMPLE PLASTICS INDUSTRIES

Versus

BAKUL MAGANBHAI, C/O RASHTRIYA GEN WORKERS UNION

Appearance:

1. Special Civil Application No. 841 of 2001

MR KM PATEL for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

MR PD BHATE, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/01/2004

ORAL JUDGEMENT

1. This petition is filed for challenging the award

passed by the Labour Court, Bhavnagar dated 11th October, 1997 in Reference (LCB) No. 895 of 1987 and also the order passed in Misc. Application No. 7 of 1998 dated 10th January, 2000 and the order dated 11th August, 2000 passed in Recovery Application No. 179 of 2000.

2. The aforesaid reference was filed by the present respondent praying for reinstatement with full back wages. According to him, he was employed by the petitioner on permanent basis and he had rendered service for almost six years. However, on 5th November, 1986 his service was terminated without any justifiable cause and without serving him any prior notice or payment of salary in lieu of the notice. Though he made demand for reinstatement by serving additional notice dated 27th May, 1987, he was not taken back in the service and, therefore, reference was required to be filed.

2.1. This claim of the respondent was contested by the petitioner by filing written statement dated 19th October, 1988. It was contended that there was no relationship of the employer and employee and, therefore, the reference was not maintainable. Further contention was that it was not true that due to some illwill or malice his service was terminated. It was further contended that because he was serving somewhere else, he intermittently came to the petitioner's concern and he was not at all regular and ultimately he had left the service on his own.

3. The record of the petition shows that initially the petitioner had engaged advocate who had appeared at the time of hearing but later on he seems to have gone abroad entrusting the case to his colleague who had failed to take adequate interest in the case and the matter seems to have been decided against the petitioner ex-parte. So far the respondent is concerned, in the affidavit-in-reply it is tried to be suggested that the petitioner had ample opportunity to contest the claim and in fact the learned advocate had at some stages appeared and, therefore, now it was not open for the petitioner to say that the same was decided ex-parte.

3.1. Heard Mr. K.M. Patel, learned advocate for petitioner and Mr. T.R. Mishra, learned advocate for respondent and also perused the record of the petition. It is clearly averred in the petition that the case of the petitioner had gone by default as the concerned advocate had not taken any interest in the proceedings and had remained totally indifferent to it. Even this fact gets indirect support from the affidavit of the

respondent. It also appears from the record of the petition that the petitioner is a small concern engaged in the business of weaving of PP monofilament yarn. It has also appeared that right from the beginning the petitioner insisted to contest the proceedings and, therefore, it had also made adequate arrangement. But unfortunately, the learned advocate remained totally indifferent to the interest of the petitioner. Not only that but subsequently when the award was passed ex-parte and Misc. Application was filed for setting aside the same, even that application was not attended to by the said advocate though he himself had filed it. It also appears that even at the time when the recovery application was filed he did not attend to the said proceedings and allowed it to be decided against the petitioner ex-parte. Not only that but it is the say of the petitioner that the petitioner was never informed about the outcome of any other proceedings. In view thereof, this matter is required to be reheard on its merits.

4. In my opinion, adequate opportunity to the petitioner is required to be granted and the ends of justice will meet if the petitioner is directed to deposit a sum of Rs.15,000/- [Rupees fifteen thousand only] before the concerned Labour Court, which the respondent be permitted to withdraw and the main reference be directed to be reheard on its merits. This amount is to be deposited by the petitioner within 15 days from today. In view of this, the order at Annexure-C is quashed and set aside. Consequently the order passed below the Restoration Application will not survive; the order passed below Recovery Application will stand quashed and set aside and the Recovery Certificate will cease to exist.

4.1. It is further directed that upon receipt of the record of this case, the Labour Court will commence the hearing and complete it as early as possible and preferably within a period of three months from the date of receipt of the record from this Court. This exercise will be undertaken only upon the petitioner depositing a sum of Rs.15,000/= before it within stipulated time. As and when the said amount is deposited, the respondent will be at liberty to withdraw the same and irrespective of the outcome of the proceedings before the Labour Court, he will not be required to return the same to the petitioner.

With these directions, this petition is allowed.
Rule made absolute with no order as to costs.

4.2 It is stated by the counsels for the parties that pursuant to the order passed by this Court, petitioner has deposited a sum of Rs.3,000/= to enable the respondent to meet the expenses which he may have to incur to contest the proceedings before this Court. This amount is at present lying in the Registry of the Court. The Registry is, therefore, directed to issue a cheque in the name of the respondent and hand it over to the learned advocate appearing for the respondent. However, it is made clear that amount of Rs.15,000/- is to be deposited over and above this amount.

[AKSHAY H. MEHTA, J.]

* Pansala.